IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE HARUN-UL-RASHID

THURSDAY, THE 6TH SEPTEMBER 2007 / 15TH BHADRA 1929

Mat.Appeal.No. 122 of 2007()

AGAINST THE ORDER DATED 30/01/2007 IN IA 1351/06 IN OP.387/2006 of FAMILY COURT, MALAPPURAM

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PETITIONER: RESPONDENTS
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1. ATTAKOYA THANGAL, S/O OLMBICHI KOYA THANGAL, NETTUR VADAKKEVEETTIL HOUSE, THACHANATTUKARA, NATTUKAL P.O., MANNARKKAD.

2. IMBICHI BEEVI, W/O OLMBICHI KOYA THANGAL, NETTUR VADAKKEVEETTIL HOUSE, THACHANATTUKARA, NATTUKAL P.O., MANNARKKAD.

BY ADV. SRI.M.SHAJU PURUSHOTHAMAN
SRI.K.S.RAJESH

RESPONDENTS: PETITIONER

SHAHARBAN, D/O SAIDALVI KOYA THANGAL, KODAMBIYAKATH HOUSE, KOTTARAM, P.O.VALANCHERY.

BY ADV. SRI.DILIP MOHAN

THIS MATRIMONIAL APPEAL HAVING BEEN FINALLY HEARD ON 06/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON I.A.599/07 IN MAT.APPEAL 122/07

DISMISSED.

06.09.2007. SD/- KURIAN JOSEPH, JUDGE.

SD/- HARUN-UL-RASHID, JUDGE.

KURIAN JOSEPH & HARUN-UL-RASHID, JJ.

Mat.Appeal No.122 of 2007

Dated this the 6th day of September, 2007

JUDGMENT

Kurian Joseph,J.

This appeal is filed against the order dated 30-1-2007 in I.A.No.1351/2006 and I.A.No.1353/2006 and the order in O.P.No.387/2006 passed by the Family Court, Malappuram. The original petition is filed by the respondent seeking return of gold ornaments and cash given at the time of the marriage. The Family Court set the appellants ex parte on the ground that they did not appear on the posting date, namely, 26-9-2006. It was also noted that the parties did not appear on an earlier occasion, namely 11-9-2006. According to the appellants they were prevented by sufficient cause, ill-health, in the matter of non-appearance on 26-9-2006. However, the Family Court has taken note of the conduct of the appellants for not appearing on 11-9-2006 also and declined to set aside the ex parte order. Having extensively heard counsel on both sides we are of the view that it is only in the interests of justice that an opportunity is given to the appellants to contest the matter on merits and therefore, it is not necessary to refer extensively to the factual matrix. However the appellants shall be made liable for the costs of

the respondent. Accordingly we set aside the order dated 30-1-2006 in I.A.Nos.1351/2006 and 1353/2006 in O.P.No.387/2006 on the file of the Family Court, Malappuram. The applications are allowed and the ex parte order in O.P.No.387/2006 is set aside. The appellants shall pay costs to the tune of Rs.10,000/- to the respondent within a period of one month from today and produce the memo before the Family Court within that period. It is made clear that in case the costs as above is not paid this appeal will stand dismissed. The parties will appear before the Family Court, Malappuram on 15-10-2007.

(KURIAN JOSEPH, JUDGE)

(HARUN-UL-RASHID, JUDGE)

ahg.